

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P. No. 14920 of 2006

Date of Decision: 23.10.2006

Manpreet Kaur Bhatia

... Petitioner

Versus

State of Punjab and others.

..Respondents

Coram : Hon'ble Mr. Justice J.S.Khehar,
Hon'ble Mr. Justice S.D. Anand.

Present : Mr. Sanjeev Sharma, Advocate,
for the petitioner.

S.D. Anand, J.

1. Respondent Nos. 1 to 3 issued an advertisement dated 4/5.2.2006, inviting applications for appointment of teachers in the rural areas of Punjab (Annexure P/1). The minimum qualification for appointment to the post of an ETT Teacher was 10+2. The petitioner, holder of an M.Sc.-degree awaiting M.Ed. result, applied for the post of ETT Teacher in the Sports Category. She submitted her application for appointment aforesaid vide receipt No. 002444 dated 17.3.2006. On 22.3.2006, the respondents issued a Corrigendum (Annexure P/4), announcing thereby that a candidate applying for appointment under the Sports Category must possess a Sports Gradation Certificate of D Grade. Thus, in terms of that corrigendum, the petitioner was fully eligible for appointment against the Sports Category. Thereafter, the respondents issued yet another corrigendum (Annexure P/10) whereby it was indicated that for appointment against the Sports category, the applicant shall have to possess a C grade Sports Gradation Certification.

2. The petitioner came to be appointed as ETT Teacher, and, on

completion of the usual formalities including Medical Examination and Character Verification, she joined her duty with effect from the Forenoon of 8.8.2006 (Annexure P/7). Before joining that post, she was employed as a Lecturer in Dolphin (PG) College of Life Sciences in District Fatehgarh Sahib in the UGC pay scale since 15.6.2006. In order to be able to join as ETT Teacher, she put in her papers as Lecturer aforesaid, in the fond hope of security of service which is inherent in a Government appointment. However, respondent No.3 issued an order dated 11.9.2006 (Annexure P/8), directing posting of Amandeep Singh (Respondent No.4), an ETT Teacher functioning at Government Primary School Devi Nagar, against the post of the petitioner which (post) was declared to have become vacant “on withdrawal of her appointment by the respondents due to non-fulfilment of terms and conditions in Sports Category.” Though, the petitioner did not receive any independent order dispensing with her services, Annexure P/8 did give a clear indication that the post held by her had been declared to have become vacant. She thereupon filed a Civil Writ Petition in this Court. It was subsequently to the filing of that Civil Writ Petition on 15.9.2006 that an order dated 8.9.2006 was affixed on her home stead. In the light thereof, she withdrew that Writ Petition, with liberty to file an amended writ petition. It is perusal of order dated 8.9.2006 which indicated that the appointment given to the petitioner as ETT Teacher had been withdrawn as she was not found to possess C Grade Sports Certification, a requirement which was introduced by means of the last indicated Corrigendum.

3. We have heard Mr. Sanjeev Sharma, Advocate and perused the record.

4. The only proposition canvassed on behalf of the petitioner is

that the respondents could not have revised the Sports Grading Certification after the selection process had commenced. The plea, raised in the context, is that the selection process would be deemed to have commenced with effect from the issue of the initial advertisement dated 4/5.2.2006 inviting applications for appointment to the post of teachers including ETT Teachers. Reliance, in support of the advocated view, has been placed upon (2005) 4 Supreme Court Cases 154 (Secretary, A.P. Public Service Commission Versus B. Swapna and others), 1997(3) RSJ, 157 (Neelam Pathak versus State of Punjab and others) and 2006(3) RSJ, 442 (G.Swarna Gouri and others versus Government of Andhra Pradesh and another). It was also argued that the corrigendum aforementioned did not come to the notice as it was published in a non-descript newspaper having meagre circulation in the area.”

5. The plea raised on behalf of the petitioner is contested on behalf of the State. It is urged, in repelling the petitioner's contention, that the judicial pronouncements relied upon by the petitioner are not applicable to the facts and circumstances of the present case.

6. We find the plea on behalf of the petitioner to be devoid of merit. The Corrigendum announcing revision of Sports Grading Certification was published in a newspaper having wide circulation in the region. It may be noticed, in the context, that the corrigendum (Annexure P/10) was published in The Tribune which is, by all means, a newspaper having wide circulation in the State of Punjab. It is not open to the petitioner to urge that the corrigendum aforesaid did not come to her notice. By the very nature of things, the publication of the corrigendum in a newspaper of that standing was in order and can safely be construed to be a notice to all the candidates

who had applied or were inclined to apply for the the post of ETT Teacher under the Sports Category.

7. The judgments relied upon by the learned counsel for the petitioner are not supportive of the line of reasoning advocated by him. All that was held by the Apex Court in Secretary, A.P. Public Service Commission's case (supra) was that the prescribed selection criteria cannot be changed once a process of selection came to be announced. It was observed that the logic aforementioned is based on fair play. It was observed by the Apex Court that "A person who did not apply because a certain criterion e.g. minimum percentage of marks, can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect." In the present case, the situation is just the other way about. It is not at all a case where the criteria had been lowered. In fact, the present is a case where the Sports Grading had been revised from D to C.

8. Neelam Pathak's case (supra) would not be applicable to the present case because it was held by a Division Bench of this Court therein that where recruitment is not regulated by the statutory rules, there can be no deviation from the condition of eligibility enumerated in the advertisement in response to which the petitioner had applied. It was observed in that case that a subsequent amendment in the rules cannot take away the right of consideration of those who were eligible at the time of advertisement of the posts. In the present case, the relevant corrigendum came to be issued long

before the candidates came to be selected and it was to apply with uniformity.

9. In G.Swarna Gouri's case, eligibility criteria had been altered with retrospective effect during the pendency of the selection process which had already commenced. The amended criteria prescribed a lower standard of eligibility. It was held under those circumstances that “there can be a legitimate grievance by those who would have been eligible to participate in the selection process by virtue of the amended eligibility criteria on the ground that if such amended eligibility criteria were known to such candidates they could also have participated in the selection process.” However, the Court rejected the proposition that as a matter of absolute rule there can never be an alteration of the rules governing the recruitment process in the mid-stream. It was observed that the rules governing the recruitment process cannot be altered mid-stream in such a way as to affect the rights of the candidates participating in the selection process to their detriment. That judicial pronouncement has no application to the facts and circumstances of the present case.

10. Even at the cost of repetition, it may be indicated that in the present case, it cannot be said that the selection process had commenced with issue of the advertisement itself. The corrigendum amending the Sports Grading Certification came to be issued long before the candidates were interviewed for the appointments under reference. The amended corrigendum was published in a newspaper having wide circulation in the region. Further, it was to apply to all the aspiring candidates with uniformity. The petitioner cannot be heard to make a grievance of the fact of the criteria Sports Grading Certification having been revised in the above

manner. The petition is held to be devoid of merits and is ordered to be dismissed in limine.

(S.D. Anand)
Judge

October 23, 2006
vkd

(J.S. Khehar)
Judge